

REMARKS

In response to the Election of Species Requirement dated July 25, 2005, the Applicant provisionally elects Species I. However, the Applicant traverses the characterization of Species I, II, VIII, IX, and X and the embodiment shown in Fig. 19 as being patentably distinct from each other, for the following reasons.

- (a) The embodiment disclosed in Figs. 8 and 9 (i.e., Species II) is virtually the same as that disclosed in Figs. 1 – 7 (i.e., Species I), with the only difference being the curved diffusing layers (84) included in the screens (32, 38) (see paragraph 0077 in the specification herein). Only claim 36 is directed specifically to Species II.
- (b) Fig. 19 discloses a screen with a front surface on which a non-reflective matte region (90) is located, as described in paragraph 0079 of the specification. This is the only difference between the embodiment disclosed in Figs. 1 – 7 (i.e., Species I) and the embodiment disclosed in Fig. 19. Only claims 34 and 35 are specifically directed to the embodiment shown in Fig. 19.

The Examiner had indicated that the embodiments disclosed in Figs. 15 – 17 and 19 should be considered one species, namely, Species VI. However, Figs. 15 – 17 disclose an embodiment which, the Applicant submits, is not particularly relevant to the embodiment disclosed in Fig. 19. The embodiment disclosed in Figs. 15 – 17 is a flame simulating assembly (330) including screens (332, 338) which each respectively include top regions (310), to enable a viewer to see through the flame simulating assembly (330). The flame simulating assembly (330) is described in paragraphs 0088 – 0091 of the specification. Because the top regions of the screens (332, 338) permit the viewer to see through the flame simulating assembly (330), as in a real two-sided fireplace, the top regions (310) enhance the simulation effect achieved by the flame

simulating assembly (330). In contrast, the embodiment of the screen disclosed in Fig. 19 does not disclose a portion thereof corresponding to the top region (310).

- (c) Fig. 21 (Species VIII) discloses an embodiment which is the same as that disclosed in Figs. 1 – 7, with the additional feature of a front reflector (105) (see paragraph 0081 of the specification herein). Only claim 37 is directed specifically to Species VIII.
- (d) Fig. 22 (Species IX) discloses an embodiment of the flame simulating assembly (430) similar to that disclosed in Figs. 1 – 7, except that the flame simulating assembly (430) does not include simulated fuel beds (see paragraph 0093 of the specification). Claims 1 – 6 and 18 – 20 are readable on Species IX.
- (e) Fig. 23 (Species X) discloses an embodiment of the flame simulating assembly (530) similar to that disclosed in Figs. 1 – 7, except that the flame simulating assembly (530) does not include a flame effect element (see paragraph 0094 of the specification). Claims 1, 2, 4, 18 – 20, 22 – 25, 27, 32, 34 – 37, and 42 are readable on Species X.

The Applicant submits that claims 1 – 6, 18 – 23, 24 – 28, 30, 32 – 33, 42, and 43 – 45 are readable on elected Species I. Accordingly, the Applicant submits that at least claims 1 – 6, 18 – 23, 24 – 28, 30, 32 – 33, 42, and 43 – 45 should be initially examined on their merits.

The Applicant submits that claims 1, 24, 42, and 43 may be considered generic claims.

The Applicant further submits voluntary amendments to the following claims: 1, 3 – 5, 18 – 28, 32 – 35, 37, 42, 44, and 45. The amendments are intended to better define the invention. No new matter has been added.

If the Examiner feels a telephone interview would help to expedite the prosecution of this application in any manner, the Examiner is invited to call the agent of record at the telephone number listed below.

Respectfully submitted,



Per: Valentine A. Cottrill
Agent for the Applicant
Reg. No. 50,187

Date: August 24, 2005

Address: 50 Queen Street North, Suite 1020
Kitchener, Ontario N2H 6M2

Phone: (519) 575-7509

Fax: (519) 571-5009

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